

IN THE DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HARVEY STEWART,

Plaintiff,

v.

ANTHONY J. PRINCIPI,
SECRETARY U.S. DEPARTMENT
OF VETERAN AFFAIRS,

Defendant.

CASE NO.: 04-11598-WGY

MOTION TO DISMISS

Defendant Anthony J. Principi, as he is Secretary of the U.S. Department of Veteran Affairs, hereby moves for dismissal of the Complaint in its entirety with prejudice. As set forth more fully in the accompanying memorandum, plaintiff Harvey Stewart brings a single claim for retaliation under Title VII, 42 U.S.C. § 2000e-3 seeking reinstatement to his previous position and compensatory damages. The Complaint must be dismissed because, on its face, it fails to state a claim. First, plaintiff failed to exhaust his administrative remedies, because he filed this action prior to expiration of the time for consideration of his appeal by the EEOC. Second, in any event, all but one of the alleged adverse employment actions are time barred. Third, plaintiff has failed to state a claim for retaliation, as there is no causal connection between the purported protected activity in 1998, and subsequent adverse employment action occurring more than three years later. Finally, based on the facts pleaded, plaintiff has not stated a claim for hostile work environment retaliation.

Wherefore, the Defendant requests that the Court grant this Motion and order that the Complaint be dismissed, in its entirety, with prejudice.

Respectfully submitted,

By his attorney,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/Barbara Healy Smith
Barbara Healy Smith
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
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Boston, MA 02210
(617) 748-3263

Dated: 5 October 2004

CERTIFICATE OF SERVICE

I certify that on October 5, 2004, I caused a copy of the foregoing to be served via the Court's electronic filing system to plaintiff's attorney of record. Parties may access this filing through the Court's electronic filing system.

/s/ Barbara Healy Smith
Barbara Healy Smith
Assistant U.S. Attorney

**CERTIFICATION OF COMPLIANCE WITH
LOCAL RULE 7.1(a)(2)**

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel certifies that on September 27 and October 5, 2004, she contacted plaintiff's counsel, regarding the grounds for and relief requested by this motion.

/s/ Barbara Healy Smith
Barbara Healy Smith
Assistant U.S. Attorney